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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 19, 2002

CAVALIER TELEPHONE, LLC,
Petitioner

v.

CASE NO. PUC-2002-00002

VERIZON VIRGINIA INC.
Defendant

DISMISSAL ORDER

On January 7, 2002, Cavalier Telephone, LLC ("Cavalier"), filed its Petition requesting that the State Corporation Commission ("Commission") suspend and investigate Verizon Virginia Inc.'s ("Verizon Virginia") FlexGrow Service tariff and enjoin Verizon Virginia from conduct described in Exhibit "A" of its Petition and alleged to be illegal and discriminatory.

The Commission issued an Order on January 22, 2002, which allowed the FlexGrow Service tariff filed by Verizon Virginia on December 20, 2001, to go into effect on an interim basis and called for responsive pleadings to be filed by the parties.¹ Pursuant to the Commission's Order of January 22, 2002, Verizon Virginia filed a Motion to Dismiss on January 28, 2002. On

¹ Order Allowing Verizon Virginia Inc. FlexGrow Service Tariff to Go Into Effect On Interim Basis ("Order of January 22, 2002").

Effective April 9, 2002, the new Case Management System requires that the case number format for all Commission orders change from, e.g., PUE010663 to the following: PUE-2001-00663.

February 1, 2002, Cavalier filed a Reply and Motion to Expand Scope of Proceeding to Encompass Investigation Previously Commenced Under Docket Nos. PUC-2001-00166 and PUC-2001-00176 ("Motion To Expand").

On February 25, 2002, Verizon Virginia filed a Response to Cavalier's Motion to Expand ("Verizon Virginia's Response") and on March 7, 2002, Cavalier filed a Reply In Support of Motion to Expand Scope of Proceeding ("Cavalier's Reply").

On March 29, 2002, Verizon Virginia filed a Motion For Protective Order to shield it from having to respond to Cavalier's First Set of discovery requests. For the reasons stated below, both Cavalier's Motion to Expand and Verizon Virginia's Motion For Protective Order are made moot by this Dismissal Order and need not be addressed separately.²

NOW THE COMMISSION, having considered the pleadings of record and applicable law, finds that Verizon Virginia's Motion to Dismiss should be granted. However, in granting this Motion to Dismiss, the Commission does not agree, as Verizon Virginia contends, that we have no authority to investigate its new service offerings pursuant to § 56-238 of the Code of Virginia. Verizon Virginia claims that the introduction of new services is governed only by Section D of its Plan for Alternative

² If Cavalier files a complaint as discussed later in this Order, any subsequent discovery issues can be raised in that case.

Regulation ("Plan").³ The Plan governing the regulation of Verizon Virginia was adopted pursuant to § 56-235.5 of the Code of Virginia. Section 56-235.5 B specifically states merely that any alternative regulatory plan adopted pursuant to this Section "may replace the ratemaking methodology set forth in § 56-235.2." Moreover, § 56-235.5 nowhere suggests that the Commission cannot apply the requirements of § 56-238 to any proposed tariff offerings (whether for new or existing services) of Verizon Virginia. The Commission simply finds that Cavalier has not demonstrated sufficient need for the Commission to either suspend or initiate an investigation of Verizon Virginia's FlexGrow Service tariff pursuant to § 56-238.

Furthermore, as evidenced in its Motion to Expand, it appears that Cavalier is primarily concerned with the alleged discriminatory practice of Verizon Virginia's provisioning of DS1 circuits ordered as an unbundled network element ("UNE") and is less truly concerned with any specific provisions of the FlexGrow Service tariff. In its Motion to Expand, Cavalier requests that the Commission resume its investigation of Verizon Virginia's DS1 and DS3 provisioning practices begun in Case Nos. PUC-2001-00166 and PUC-2001-00176. While these cases have been closed and may not be procedurally re-instituted in the

³ Most recently approved/modified in Case No. PUC-2001-00032. Verizon Virginia contends that because it has proposed to classify FlexGrow as discretionary, the only challenge can be to the proper classification of service (p. 3 of Verizon Virginia's Motion to Dismiss).

guise of this proceeding, Cavalier may file a complaint or other appropriate action in a separate proceeding against Verizon Virginia addressing its alleged discriminatory provisioning practices in providing DS1 and DS3 UNEs for the Commission's consideration if it wants us to undertake a new investigation.

Accordingly, IT IS ORDERED THAT:

- (1) This case is hereby dismissed without prejudice.
- (2) Verizon Virginia's FlexGrow tariff shall remain in effect.